

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 585 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

VADNAGARA CARRIERS

Versus

SURENDRANAGAR PEOPLE'S CO.OP. BANK LTD.

Appearance:

MR SURESH M SHAH for Petitioners
MR SHIRISH JOSHI for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 18/04/2000

CAV JUDGEMENT

The present petitioners were the original defendants and judgment debtors in Special Execution Petition No.52/92 before the learned Civil Judge (SD), Surendranagar. It appears that the present respondent

obtained an award from the Board of Registrar's Nominee. The respondent also obtained a certificate from the Registrar, Board of Registrar's Nominee in case No.29/88.

2. The Certificate shows that the respondent is entitled to recover an amount of Rs.3,36,700/- from the present petitioners. It further says that the respondent shall further be entitled to interest at 16% per annum from 1.7.1987 till the date of realization on the principal amount of Rs.3,25,000/-. The certificate further says that the respondent shall also be entitled to recover from the petitioners cost of Rs.575/-. The certificate was issued on 31.8.1989. There is no serious dispute about the same. Since the petitioners did not pay the aforesaid amount in terms of the certificate and award, the respondent preferred execution petition being Execution Petition No.52/92 before the learned Civil Judge (SD), Surendranagar for recovery of the aforesaid amount. It seems that the process was undergone and the learned Civil Judge passed an order that the aforesaid amount be recovered by disposing of the property of the petitioners. Sale proclamations were issued but nobody turned up to stand as bidder. Therefore, the present respondent applied before the Court for permission to stand as bidder. Permission was granted and the respondent claimed the said property in a sum of Rs.12 lakhs. That bid was accepted and the respondent was declared as purchaser and sale certificate was issued in favour of the respondent in respect of the property of the petitioners. Thereafter, the petitioners contended before the trial court in the aforesaid Execution Petition that the respondent had purchased the said property in a sum of Rs.12 Lakhs. However, there were other requests and the total amount of the property was more than the amount claimed by the respondent, and therefore, the sale deed in favour of the respondent be cancelled. The petitioners also applied before the executing court that the respondent has shown that total dues exceed Rs.12 lakhs. However, no account has been submitted and, therefore, the respondent be directed to prove the accounts, since the petitioners did not admit that the total dues exceed Rs.12 lakhs. On the aforesaid contentions, application Exh.62 in the Execution Petition came to be rejected on 2.4.1996 stating that the sale deed has been issued and the property has been sold to the respondent and nothing was required to be done.

3. Feeling aggrieved by the said order of the executing court, the petitioners have preferred this application in revision under Section 115 of the Code. It has been mainly contended that the total dues did not

exceed Rs.12 lakhs and since the respondent has purchased the property for Rs. 12 lakhs, the respondent should be directed to prove the dues and if there is any balance, it should be paid over to the petitioners.

4. I have heard the learned Advocates for the parties and have perused the papers. So far as the respondent is concerned, Mr Shirish Joshi, learned Advocate appearing for the respondent claims that the respondent is entitled to charge compound interest from the petitioners. On perusal of the aforesaid certificate issued by the Member of the Board of Registrar's Nominee, it is very clear that the certificate does not show that the respondent is entitled to compound interest. Even if we go through the original award, it does not speak of compound interest. In view of the above, the respondent cannot claim more than what was awarded to the respondent by the competent authority. Therefore, the respondent is not entitled to compound interest.

5. It has then been contended by the learned Advocate for the respondent that the respondent is a Cooperative Bank and as per the practice and procedure of the respondent bank, the interest was due at an interval of three months and at least it should be allowed to calculate interest at annual basis and, therefore, interest of each year should be treated to be principal amount in the next year. This would mean that the respondent claims compound interest which is not permissible in view of the award passed in favour of the respondent which does not say that the respondent can claim compound interest. Therefore, even on this consideration, the respondent cannot claim compound interest on the principal amount.

6. A look at the accounts on the petitioners' side states that as per the previous order of the Executing Court, the respondent was entitled to an amount of Rs.7,18,603/-. That thereafter, the interest of Rs.82,875/- will fall due and that is required to be added to the aforesaid amount and, therefore, the total amount to which the respondent is entitled, would come to Rs.8,01,478.00. This appears to be little incorrect in view of the fact that the petitioners have not calculated certain amount which have been given credit to by the respondent. Therefore, it is required to consider the account shown by the respondent according to which following will be the position:

Rs. 3,36,780.23 Principal amount due as
per the award

Rs.	570.00	Expenses
Rs.	4,55,000.00	Simple interest from 1.7.87
		to 31.3.96 on principal amount
		of Rs. 3,25,000/- at 16% p.a.
plus	Rs. 45,876.00	guarantee, insurance etc.

Rs. 8,38,226.23

Less: Rs. 1,12,168.25 the amount credited

Net: Rs. 7,26,057.98
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It seems that the respondent has properly calculated the amount of interest, expenses and the amount received by the respondent and, therefore, I am of the view that the aforesaid amount should be treated to be the amount which was due to the respondent by the petitioners on the date on which the sale was finalized.

7. It is an admitted position that the respondent has purchased the aforesaid property in a sum of Rs.12 lakhs. If the aforesaid amount of Rs.7,26,057.98 is deducted from the amount of Rs.12 lakhs, then the amount which will fall due would come to Rs. 4,74,022.02 which can be rounded off to Rs.4,74,022. It is, therefore, clear that the aforesaid amount will stand due to the petitioners by the respondent and the respondent will be required to deposit the aforesaid amount before the executing court. In the aforesaid view of the matter, considering the case of the rival parties, it is absolutely clear that the petitioners are justified in asking back the aforesaid amount from the respondent. It will be seen here that the petitioners contended for two prayers before the executing court. The first was to cancel the sale certificate handed over to the respondent which was rejected by the executing court and there is no submission before me with respect to the said rejection of the said prayer. Therefore, I am not required to consider that aspect of the matter. So far as the second prayer is concerned, the case of the petitioner was that though the petitioner has purchased the property in Rs.12 lakhs, the respondent has not supplied accounts. Therefore, the accounts should be supplied. This aspect has totally been ignored by the executing court. The executing court was required to decide the issue and it had jurisdiction to decide the issue. However, by ignoring the said prayer, the executing court has committed serious irregularity with respect to jurisdiction and it has failed to exercise jurisdiction

vested in it and, therefore, this Court is required to interfere with the aforesaid order of the executing court. It is, thus, clear that the aforesaid amount is due to the petitioner by the respondent and, therefore, the respondent should be directed to deposit the amount before the executing court within the time which may be stipulated in the order.

8. In view of the aforesaid, when the executing court has committed error of jurisdiction, this Court should interfere with the aforesaid order of the executing court and pass following orders:

This Revision Application is accordingly allowed and the order passed by the executing court is set aside to the extent that the order does not speak with respect to the prayer of the petitioners regarding supply of accounts. The respondent is, therefore directed to deposit a sum of Rs.4,74,020 before the executing court within three months hereafter and on such deposit, the petitioners shall be at liberty to withdraw the said amount from the executing court.

Rule made absolute accordingly. There shall be no order as to costs.

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msp.